IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15637 of 2004

Between:

Thummala Pradeep Reddy, S/o Late Sri Raghava Reddy,
R/o B-5 Ravindra Nagar Colony, Habsiguda, Hyderabad.

... PETITIONER

AND

1 The Registrar of Companies, Andhra Pradesh, Hyderabad.
2 The Superintendent of Police, Warangal District.
3 The Superintendent of Police, Karimnagar District.
4 The Superintendent of Police, Khammam District.
5 The Station House Officer, Kothagudem III Town,
Khammam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent police in falsely implicating the petitioner in criminal cases which were filed against "Harsha Leafin Commercial Limited, Warangal", without verifying the factual position of the management with the Registrar of the Companies as illegal, arbitrary and against the provisions of the Companies Act and quash the FIR No. 95/2004 of P.S. Kothagudem III Town , Khammam district and consequently direct the respondent police not to implicate the petitioner in the criminal cases which were filed or to be filed against "Harsha Leafin Commercial Limited Warangal".

Counsel for the Petitioner: MR.P.GIRI KRISHNA

Counsel for the Respondents: GP FOR HOME

The Court made the following:

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.15637 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the respondents 2 to 4 in falsely implicating the petitioner in criminal cases which were filed against Harsha Leafin Commercial Limited, Warangal as arbitrary and illegal and consequently to quash the proceedings in FIR No.95/2004 on the file of Kothagudem III Town Police Station, Khammam District.

It is stated that the petitioner along with some others established a Company by name Harsha Leafin Commercial Limited which was incorporated under the Companies Act, 1956 and a certificate of commencement of business was issued by the Registrar of Companies in the year 1996. The main objects of the company was to carry on the business of financiers, to receive money on deposit at interest or otherwise for fixed periods and to lend money on any terms that may be thought fit to any person, firm, company, etc., The petitioner was one of the Directors of the said Company. However, due to personal reasons, he tendered his resignation as Director of the company and the same was accepted by the Board of Directors on 25-03-1999 and it was also incorporated in the Registrar of Companies in Form No.32. It is claimed that he has settled all his liabilities with the company and issued a notice in Krishnapatrika Telugu Daily on 08-02-1999 calling for objections, if any,

from shareholders / interested persons, apart from the personal notices issued to the shareholders by book-post. After his resignation, he personally issued another notice in Krishnapatrika on 17-03-1999 informing the shareholders and the general public the fact that his resignation was accepted. While so, it appears that some of the subscribers who did not receive their monies from the Company after their fixed deposits were matured, lodged criminal complaints in the concerned police stations in Warangal, Karimnagar and Khammam Districts against the Company as well as its Directors. In pursuance thereof, the Police without making the necessary enquiries with the Registrar of the Companies, have been registering cases against the petitioner in spite of the fact that he has resigned as Director long back and is in no way connected with the day to day affairs of the Company. One of the cases so registered was Crime No.95 of 2004 on the file of the P.S. Kothagudem III-town. It is alleged that the said crime was registered in spite of the fact that his name did not figure in the FIR. Hence, this writ petition contending inter alia that the action of the respondents in implicating him in the criminal cases without application of mind as to the status of the company is arbitrary and illegal and therefore to quash the proceedings in Cr.No.95 of 2004.

On behalf of the respondents 4 and 5, the Station House Officer, P.S. Kothagudem III town, Khammam District filed a counter-affidavit stating that the petitioner was the Managing Director of the Finance Company – M/s. Harsha Leafin Commercial Limited. It is alleged that they induced the public by making wide publicity and collected lakhs of rupees by way of deposits, but failed to pay the amounts after the maturity period and wound up the company. In the circumstances basing on the complaints received from the depositors, a case was registered in Cr.No.16 of 2004 and Cr.No.95 of 2004 under Sections 406 and 420 of I.P.C. on the file of P.S. Kothagudem III-town, Khammam District. Though the other Directors were arrested, the petitioner was absconding from the date of the offence. The allegation made by the petitioner that the respondents are harassing him and calling him to the police station frequently has been denied and it is stated that the writ petition is misconceived and liable to be dismissed since the petitioner has cheated innocent people not only in the State of Andhra Pradesh, but also in the other States.

The first respondent – Registrar of Companies filed a separate counter-affidavit

stating that the petitioner who was appointed as one of the first Directors of the company with effect from 03-02-1996 retired from the Board of Directors with effect from 25-03-1999 and the said fact was informed by the Company in Form No.32 as per Section 303 (2) of the Companies Act, 1956, only on 18-06-2001, which was taken on record by the first respondent vide document No.20 dated 20-06-2001.

It is further stated that as a matter of fact the petitioner himself signed Form 32 on behalf of the Company in the capacity of Managing Director intimating the particulars of voluntary resignation of one Sheri Malady Dames Reddy from the directorship on 31-01-2001 which clearly shows that he continued as Managing Director of the Company at least upto 19-2-2001. In the factual position, the very contention of the petitioner that he is not responsible in any manner whatsoever from the date of his retirement (i.e., 25-3-1999), is not true. Hence, the writ petition is misconceived and the petitioner is very much liable along with the said company and its directors both jointly and severally for the repayment of the amounts to the deposit holders and for the alleged offences as narrated in the petition.

I have heard the learned Counsel for the petitioner, the learned Government Pleader appearing for the respondents 2 to 5 and the learned Standing Counsel appearing for the first respondent.

At the outset, it is to be noted that the relief sought by the petitioner is of two-fold. Firstly, he seeks a direction to the respondents 2 to 4 not to register any criminal case against him and secondly to quash the FIR No.95 of 2004 on the file of Kothagudem III Town Police Station, Khammam District. In substance, the relief is to prohibit the respondents 2 to 4 from taking any action against him in connection with the complaints made by the depositors against Harsha Leafin Commercial Limited.

On a careful consideration of the entire material on record, I do not find any justifiable reason to grant the relief as prayed for. The entire case of the petitioner is based upon the plea that his resignation as Director of the Company was accepted by the Board of Directors on 25-3-1999 and therefore he cannot be made

responsible in any manner whatsoever for the alleged defaults on the part of the Company. The said plea prima facie does not appear to be tenable since admittedly the Form No.32 from the Company informing the resignation of the petitioner was received by the Registrar of Companies only on 20-06-2001. That apart, it is also the specific case of the 1st respondent – Registrar of Companies that the petitioner himself signed as a Managing Director of the Company in Form No.32, dated 31-01-2001 while informing the resignation of one of the Directors by name one Sheri Malady Dames Reddy. Thus, absolutely not even a prima facie case is made out to show that the petitioner was absolved of his liability as the Director of the Company with effect from 25-03-1999. Hence, no Writ of Mandamus can be issued restraining the respondents 2 to 4 from registering the FIRs on the basis of the complaints received from the depositors. After all, recording of FIR is nothing but setting in motion of a criminal investigation and ultimately the charge-sheet will be filed only if the allegations are established after due investigation.

So far as quashing of the proceedings in FIR.No.95/2004 investigation is concerned, the law is well settled that no investigation into a criminal proceeding can be quashed unless the allegations contained therein, even on their face value taken to be correct, make out no case. One of the grounds on which, a complaint may be quashed is where the proceedings are found to be maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge { vide STATE OF HARYANA vs. BHAJANLAL (1992 SCC (crl.) 426) }. In the case on hand, on the basis of the material on record, it cannot be held that the allegations do not prima facie constitute any offence against the petitioner. Whether the petitioner cannot be made responsible on the ground of his resignation as a Director of the Company is a question to be decided only after the investigation into the allegations. To arrive at a conclusion at this point of time while exercising the jurisdiction under Article 226 of the Constitution of India is impermissible and unwarranted.

Accordingly, the Writ Petition is dismissed. No costs.

20th April, 2005.

Gbs

... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Registrar of Companies, Andhra Pradesh, Hyderabad.
2 The Superintendent of Police, Warangal District.
3 The Superintendent of Police, Karimnagar District.
4 The Superintendent of Police, Khammam District.
5 The Station House Officer, Kothagudem III Town,
Khammam District.

6 Two CCs to the Government Pleader for Home, High Court

Buildings, Hyderabad.

7 Two CD copies.